

REMARKS

Applicants appreciate the Examiner's acknowledgement of rejoinder of the process claims associated with the product claims, so long as the process limitations include all those associated with an allowed product claim. Therefore, Applicants have rewritten the elected product claims and related process claims to encompass the same claim language.

Claims 9-13 and 31-34 were elected for the instant application. By the above amendment, Applicants have rewritten Claim 13 into independent form (as new Claim 58), since it was considered a patentable claim, but dependent upon a rejected claim. As a result, Claim 58 should be allowable. Note: The word "formulation" has been added to Claim 58.

Applicants have maintained the withdrawn process claims corresponding to the scope of the pending product claims, including Claim 30, which is dependent on Claim 1. Therefore, the claims pending are now Claims 1-3, 5-11, 14-16, 18-20, 30-34, and 58.

Since the subject matter of Claim 58 should be allowable, Applicants request that original Claim 12 also be considered allowable. In the present Office Action, on page 12, it is stated: "The vaccine formulation of claim 13, utilizing a proteosome:HA mixture of 4:1 would be allowable. Figure 1c indicates that this formulation produces a significantly greater immune response as compared to the 1:1 or 1:4 formulation, which is not anticipated by the prior art." Since original Claim 12 (now amended Claim 10) has a ratio of "greater than 1:1", Applicant asserts that Figure 1C supports the scope of amended Claim 10, because the figure shows an improved response for a ratio of greater than 1:1. Therefore, they respectfully request the allowance of Claims 10 and 58. Furthermore, Applicants have amended all of the pending composition and associated process claims to include the ratio of greater than 1:1 and thereby believe the pending claims are allowable. Applicants do reserve the right to file any subsequent patent applications to restricted and/or cancelled subject matter.

Rejections under 35 U.S.C. § 102(b)

Claims 9, 31, and 32 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,726,292 (Lowell). Applicants respectfully traverse, in part. As noted by the Examiner, original Claims 12 and 13 were not considered as anticipated by Lowell. Further, it is stated in the Office Action on page 5, that in Lowell the proteosomes were added to provide a 1:1 ratio with gp160 and that Lowell does not teach that the proteosomes need to be present at a greater proportion compared to the peptide. Therefore, Applicants assert that the claims as amended, which require a ratio greater than 1:1, are not anticipated by Lowell and the rejection should be withdrawn.

Claims 9-11 were rejected as anticipated under 35 U.S.C. § 102(b) by Levi, *et al.*, Vaccine, 13:1353-1359 (1995) (Levi). Applicants respectfully traverse, in part. Claims 9-11, as amended, require a ratio of greater than 1:1, and are not anticipated by Levi. In addition, Levi addresses peptides and not proteins as claimed.

For these and other reasons, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102(b).

Rejections under 35 U.S.C. § 103(a)

All of the then pending and elected claims were rejected under 35 U.S.C. § 103(a) as obvious over Levi and Lowell. Applicants respectfully traverse, in part. All of the pending process and product claims include a ratio of proteosome to antigen of greater than 1:1. The cited references, alone, or in combination, do not render such claims obvious.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 405352000600. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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